

# Crime and Misconduct Commission

## Review of ICAC Investigation

Report October 2012

Facilitation of payment of  
false invoices by staff  
from local councils

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# The companies

- Eron Fisher, Richard Pearce, Douglas Quinn and Martin Slade of Hilindi Pty Ltd trading as **R&R Tape Supplies**
- Ronald Butow, Paul Goldin, Ellis Kahn, Jody Parker and Mark Moskow of **Momar Australia Pty Ltd**
- Gary Blackford, Robert Epps, Peter La-Vite, Sri Ramachandran and Jacqueline Verdeyen of NCH Australia Pty Ltd trading as **Chemsearch** and **Mantek**.

# The Government authorities

- Ballina Shire Council
- Bathurst Regional Council
- Broken Hill City Council
- Burwood Council
- Byron Shire Council
- Council of the City of Botany Bay
- Council of the City of Sydney
- Lithgow City Council
- Council of the City of Sydney
- Lithgow City Council
- Liverpool City Council
- Narrandera Shire Council
- Orange City Council
- Roads and Traffic Authority
- Walgett Shire Council
- Waverley Council
- Yass Valley Council

# Others

- The investigation found that a large number of public officials across 110 agencies took gifts without declaring them, contrary to such policy and training.
- The gifts accepted far exceeded any reasonable concept of token value, and included holidays, television sets, camcorders, DVD players, iPads, iPhones, coats and gift vouchers.

# Make friends

The sellers were trained to ask questions about:

- Family
- Interests (hobbies, sporting interests, favourite sports teams)
- Health

And to portray an interest that they did not really have. This became apparent once a buyer left their position, the interest and concern disappeared.

# Mechanism

First Gear: People buy from people they like and trust

- **Introduction**
- **Qualify the buyer**
- **Novelty presentation**
- **Warm up**
- **Transition**  
(to the products)

*“Present the “icebreaker” or small novelty. When the person accepts, they become psychologically indebted to help you. That’s the value of using a small novelty (e.g. pen, hypo-oiler, key chain)”*

NCH Corporation - 2006

# The gifts

Were given according to a set process:

- Start small with gifts worth modest amounts,
- Increase the value of the gifts with the value of orders
- As the value (and physical size) of the gifts increased, salespeople would suggest that the gifts should be sent to the buyers' homes, rather than their work
- Concealing the receipt of gifts created a greater feeling of gratitude in the recipients, and also a fear of being found out
- Buyers then fell further into the grip of the salespeople and, in some cases, began placing larger and larger orders to achieve more valuable gifts.

# The public officials

- Seven had already been subject to disciplinary action, including demotion, and three were recommended for disciplinary action in the report
- Ten whose conduct was examined in the report had resigned their positions
- The average length of service of these 10 officials with their respective agencies was 17 years



# The fraud

## False invoices:

- Split invoices to avoid the delegation limit
- Goods delivered
- Goods delivered but at inflated prices
- Goods partially delivered and others placed on “back-order” that were never delivered
- Goods on completely false invoices that were never intended to be delivered

# The investigation

- Geoffrey Hadley, former senior council storeman at Bathurst Regional Council, received corrupt payments exceeding \$300,000, and
- Kerry Smith, former storeman at Yass Valley Council, received corrupt payments exceeding exceeded \$23,000;

Cost the councils involved over \$1.5 million, combined

# Deficiencies

- agencies generally focused on having rules in place around the acceptance of gifts, but
- did not consider corruption risks in the broader relationship between buyer and supplier, and
- the opportunity for corruption in their procurement and inventory management systems.

# The offences – 9 people

## ICAC Act Offences

- giving false or misleading evidence at a Commission hearing (x3)
- making a false statement to a Commission officer (x4)

## Crimes Act offences

- offering a corrupt benefit (x3)
- obtaining a financial advantage by deception (x3)
- obtaining financial advantage by false or misleading statements (x3)
- receiving a corrupt benefit (x1)

# CMC Investigation – Operation DAKOTA

## Gold Coast City Council

### **3 Purchasing officers**

- Darryl Wayne Bridger
- David Robert Mason
- Murray Wayne Osborne

### **2 Businessmen –SMS Contracting Pty Ltd**

(The SMS Group operated under 6 different trading names)

- John Richard Stubbs
- (Peter) George Swain

Received \$2.75m – Sept 1998 to May 2001

# Summary

\$30,745 in benefits vs \$2,750,000 paid to the company.

- Conclusion?
- Australian public officials can be “bought”; and,
- Australian public officials come cheap

# The business entities

- Brider provided \$1.5m and received \$11,381.75 for six lots of travel and three of accommodation,
- Mason provided \$300k and got \$10,427.31 by way of five cash payments, accommodation and four instances of travel,
- Osborne provided \$950k and received \$8,937.29 via eight trips and three lots of accommodation.

# Observations

- Officers knew about and were conversant with the Council's purchasing policy, and could readily quote their delegation and their spending limits
- Officers understood most elements of the Gifts and Benefits policy (variation around the gift limit and department store gift vouchers)
- Officers understood and were conversant with the Code of Conduct
- Officers didn't understand or didn't believe in "the slippery slope"



# Observation

“In public sector organisations, procurement transactions span the boundary between the impartial and ordered world of the bureaucratic administration inside the organisation and the profit-seeking world of the free market on the outside.

The actions of many public sector agencies suggest that they regard procurement as just another cog in the machinery of government, guided by policies and procedures. They appear oblivious to the commercial practices and pressures pulling at their staff, including false friendships and inducements that may be offered by suppliers.”

# Lessons learnt

- Most purchasing occurs in poorly managed environments without close supervision
- There is an assumption that purchasing officers will act impartially
- Suppliers are not impartial and are trained in specific sales tactics, specifically, reciprocity and psychological indebtedness
- Most purchasing officers are not adequately prepared for these circumstances or tactics thinking that sales people's actions are genuine

# Lessons learnt – Corruption prevention

- Clear communication with suppliers about expected behaviours
- A comprehensive engagement framework
- A review of code of conduct and gifts policies
- Prohibition on receiving gifts for holders of delegations
- Focus staff policy training on consequences
- Training for “relational selling” for identified staff

# Lessons learnt – Corruption prevention

- Review of procurement processes to identify points of corruption risks
- Consider using e-procurement (separate purchasing officers from sales people)
- Drill down on procurement patterns to establish Procurement Officer spending profiles on all cost centres
- Analyse and assess inventory management systems to improve controls and reduce waste

## Lessons learnt – Corruption prevention

- Examine “pull-based” inventory ordering
- Clearly label stock and use an integrated inventory management system
- Stock-takes conducted by independent store officers who are knowledgeable about principles of stocktaking
- Conduct random spot checks of selected stores
- Consider the risks of relational selling & gift giving

## Next topic

### Review of the Crime and Misconduct Act

- Review recommendations
- Sections of the Act

# Review Recommendations

## Recommendation 3B

The Crime and Misconduct Act should be amended to require all complaints to be accompanied by a statutory declaration (or, in case of urgency, within 7 days of a complaint) to the effect that:

- a) the complainant has read and understands the relevant sections (setting them out in the declaration) of the Crime and Misconduct Act;
- b) that the complaint is not a baseless one; and
- c) that the complainant will keep the matters the subject of the complaint (and its making) confidential for all purposes unless and until a decision is made upon it that results in a criminal prosecution or proceedings in respect of it in QCAT.

We emphasise that the statutory declaration should quote the definitions of “official misconduct” and “baseless complaint”

# Review Recommendations

## Recommendation 4

The CMC's preventative function should cease, except for such advice and education arising out of the course of an investigation. The remaining preventative functions should largely be undertaken by the Public Service Commission.

Such functions therefore as the CMC presently exercises under sections 24(c), 24(e), 24(h), 33(a) and section 34(b) of the Crime and Misconduct Act, ought be transferred to the Public Service Commission.



## 24 How commission performs its prevention function

Without limiting the ways the commission may perform its prevention function, the commission performs the function by—

- (c) analysing systems used within units of public administration to prevent misconduct; and
- (e) providing information to, consulting with, and making recommendations to, units of public administration; and
- (h) generally increasing the capacity of units of public administration to prevent misconduct by providing advice and training to the units and, if asked, to other entities;

## **33 Commission's misconduct functions**

The commission has the following functions for misconduct (its misconduct functions)—

- (a) to raise standards of integrity and conduct in units of public administration

## 34 Principles for performing misconduct functions

It is the Parliament's intention that the commission apply the following principles when performing its misconduct functions—

### (b) Capacity building

- the commission has a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately

# Recommendation 8

The law should be that it is an offence for any person (including an officer of the CMC) to disclose that a complaint has been made to the CMC, the nature or substance or the subject of a complaint, or the fact of any investigation by the CMC except for:

1. in the case of a public investigation, fair reporting of, and debate about it, will be permissible.
2. as authorised by the Supreme Court in advance of publication or disclosure if there be a compelling public interest in such publication or disclosure
3. in the case of a person cleared or not proceeded against who authorises in writing disclosure of it. Disclosure could occur if otherwise required by law, such as by Court processes or Court order.

- Questions